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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 229

STANLEY TAYLOR, *Petitioner*,

vs.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITION FOR REHEARING.

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o the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now the petitioner Stanley Taylor, by his attorneys, and prays that this Honorable Court rehear and reconsider his petition herein which was denied by the Court on October 9, 1944.

The grounds upon which petitioner bases his prayer are as follows:

1. The denial of certiorari herein, to the extent that it makes final the judgment of the Circuit Court, unconstitutionally deprives this petitioner

(a) of the right to defend and preserve his liberty and property in a criminal prosecution on the ground that the regulation which he is accused of violating is unconstitutional on its face and as applied therein,[1] and

(b) of the right and opportunity to obtain a determination of the validity of the regulation and the procedure *prior to the imposition of punishment,*

notwithstanding that petitioner has not waived or forfeited his right to such defense or adjudication by failure to make

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[1]In sustaining the validity of the Emergency Price Control Act of 1942, the majority opinion in *Yakus v. U. S.*, 321 U. S. 414, 88 L. Ed. 653, reserved the question as to whether an accused might constitutionally be deprived of this defense. This question was also reserved in *Bowles v. Willingham*, 321 U. S. 503, in the concurring opinion of Mr. Justice Rutledge, and by the Court in *Lockerty v. Phillips*, 319 U. S. 182, 87 L. Ed. 1339.

The Emergency Court of Appeals also refused to pass upon this feature of the Act when the question was raised by petitioner in *Taylor v. Brown*, 137 F. (2d) 654.

Concerning this matter, Mr. Justice Rutledge stated in his dissent in the *Yakus* case:

> "Once it is held that Congress can require the courts criminally to enforce unconstitutional laws or statutes, including regulations, *or to do so without regard for their validity*, the way will have been found to circumvent the supreme law and, what is more, to make the courts parties to doing so. This Congress cannot do. * * * whenever the judicial power is called into play, it is responsible directly to the fundamental law and no other authority can intervene to force or authorize the judicial body to disregard it. The problem therefore is not solely one of individual right or due process of law. It is equally one of the separation and independence of the powers of government and of the constitutional integrity of the judicial process, more especially in criminal trials." (Our emphasis.)

The foregoing was concurred in by Mr. Justice Murphy, and the principles enunciated there were supported in separate opinions by Mr. Justice Roberts in both the *Yakus* and *Willingham* cases.

ly assertion of such right before the tribunal having sdiction to determine it.[2]

Unless this Honorable Court by a suitable order or ion reserves decision on the matters herein presented preserves the liberty of petitioner until he is able to in adjudication of the constitutional questions here lved by the statutory procedure,[2] this Court will, in ct, be approving:

(a) the taking of private property for private use without due process and without compensation,[3] and

(b) the punishment of petitioner for alleged violations of the regulation without a constitutional trial[4] and notwithstanding that Official O.P.A. Regulations and Interpretations grant immunity and establish that the conviction was erroneous and contrary to law.[5]

Petitioner's protest MR 28-31-P seeking determination of the idity of the regulation as constituted at the times involved ein and as applied to petitioner in this case is still pending ore the administrator. (Petitioner's Reply Brief, note 9, p. 17.)

Petitioner, under the opinion of the Circuit Court and under regulation as enforced against him by the administrator, is pelled to continue renting the property in question and is rived of any compensation for the use of laundry equipment other facilities which were not provided on March 1, 1942, which petitioner is now required to provide. (R. 46, 159-170; pp. Tr. 24, 26.)

Petitioner has as yet been deprived of any adjudication of constitutional questions involving the validity of the regulation which determinative of this case. (Supp. Tr. 21-39; see also Petiner's Reply Brief herein, pp. 6-18.)

See Petitioner's Reply Brief, pp. 2-3.

ARGUMENT.

I.

The first questions presented by this case, and which were specifically reserved by this Honorable Court in *Yakus v. U. S., Bowles v. Willingham,* and *Lockerty v. Phillips* (see footnote 1, p. 2 hereof) are whether the Emergency Price Control Act of 1942 may validly compel enforcement of the regulation in question by the District Court and at the same time deprive said Court of "jurisdiction or power to consider the validity" in the cases such as this where petitioner has duly challenged the validity of the regulation by the statutory procedure and has been unable to obtain a determination thereof either as constituted during the time involved, or as applied to the circumstances of this case.

A further question presented by this case (which was also left undecided in the *Yakus* and *Willingham* cases) is whether the procedure of the Act, compelling a criminal trial to be split into two separate and entirely independent proceedings, is capable of providing due process or a constitutional trial in a criminal case. The majority opinion in each of these cases failed to pass upon this point, holding in the *Yakus* case that it was not presented therein by reason of the fact that the petitioner in that case, having failed to apply the procedure, was not in position to show that it was inadequate. The minority opinions in each case, however, held that the procedure was unconstitutional, particularly as applied to a criminal trial. (See footnote 1, p. 2, hereof, for opinion of Mr. Justice Rutledge in his dissent in the *Yakus* case.)

Coming to the circumstances of the instant case, the question before this Court is whether, as applied herein, the procedure of the Act has afforded due process to this petitioner in the protection of his constitutional right to liberty and the possession and control of his property.

It is plain that in this case the procedure has proven to be totally lacking in due process, for petitioner, although he pursued such procedure diligently, has been deprived of any adjudication of the validity of the regulation as applied in the circumstances of this case.

This petitioner has not waived or forfeited his right to an adjudication on these points above or to a determination of the validity of the regulation, either on its face or as applied herein, as this Court indicated that the petitioners or parties had forfeited their rights in the cases of *Yakus v. U. S.* and *Bowles v. Willingham*, supra. On the contrary, the petitioner herein not only exercised his right of protest against the regulation by following the statutory procedure (R. 115, 121) but challenged the exclusive jurisdictional and procedural features of the Act as well. (R. 136-138.)

On his original protest, petitioner was denied any hearing and deprived of the opportunity to present evidence in support of his assertions which were summarily dismissed by the Administrator without statement of economic data or other facts of which the Administrator had taken official notice. (Supp. Tr. 35-36.) Upon complaint to the Emergency Court of Appeals in *Taylor v. Brown*, 137

F. (2d) 654, following the denial of his original protest, petitioner again challenged the validity of the regulation and the procedure and exclusive jurisdictional features of the Act. (R. 121-147.)

After the complaint in *Taylor v. Brown* was mailed to the Emergency Court (R. 122) the Administrator materially amended the regulations and subsequently (Nov. 9, 1942) brought civil action against petitioner to deprive him of the right to operate his property under Section 1388:1804(d)(4) of the regulation, thus depriving petitioner of any compensation for the use of laundry equipment and other facilities provided for the first time after March 1, 1942, and compelling him to rent rehabilitated and improved premises 25% below the rentals of comparable accommodations. (R. 46, 49, 94, 98, 117, 150, 151, 158, 176, 159-160; also see footnote 5, p. 11 of Petitioner's Reply Brief herein.) The amended regulation compelled the continued renting of the property and when petitioner, subjected to the arbitrary actions above and denied administrative hearing or relief and threatened with "a lot of litigation" by the O.P.A. attorney, sought to withdraw his property from rental under authority of Section 4(d) of the Act, the Administrator brought contempt proceedings against him and required him to continue renting said property. (R. 160-175.) One week after petitioner's attempt to withdraw his property from rental the Criminal Information was filed against petitioner in the present case, charging criminal violations of the regulation prior to the filing of the civil suit and prior to any notice or indication from the Administrator that the improvements in question were not deemed to be major capital improve-

ments by the Administrator. (R. 2-42, 175, 95, 154, 180, 117.)

After these events (the amendments to the regulations and the proceedings taken against petitioner in the civil case and the instant criminal case) petitioner sought to present these matters to the Emergency Court of Appeals in *Taylor v. Brown*, supra, which was then pending, as bearing upon the validity of the Act and regulation. Permission to place these matters before the Court was denied, and subsequently Protest MR 28-31-P was filed by petitioner to obtain an adjudication of the constitutional questions here involved.

In *Taylor v. Brown*, the Court, having denied petitioner the right to file evidence supra, refused to consider the regulation as applied to petitioner or as it was constituted at the times involved herein, stating in the first paragraph of its opinion,

> "We are thus called upon to consider the constitutional validity of the act and regulation generally and without regard to their particular application to the complainant."

The Emergency Court in *Taylor v. Brown* also refused to pass upon the validity of the exclusive jurisdiction features of the Act as applied to a criminal trial, stating:

> "The Act vests in this court jurisdicton to consider the validity of price and rent regulations and by its terms seeks to make that jurisdiction exclusive. We are not called upon to decide, however, whether the provisions of the Act which thus deny similar jurisdiction to all other courts are constitutionally effective to do so, since even if they should be held invalid the

> remaining provisions of the Act would not, in the light of the separability clause of Section 303, be affected thereby."

Certiorari was denied by this Court in *Taylor v. Brown* on the same day that it accepted the case of *Bowles v. Willingham,* which case upheld the Act in part but as we have shown did not settle the questions here presented or establish the validity of the regulation.

It is respectfully submitted that the questions first enumerated under this point and set forth in our original Petition herein (pp. 2-3) are squarely presented by this case and that they should be decided now, before petitioner is subjected to punishment without a complete and proper trial, and not after he has served his term of imprisonment and suffered further financial losses.

II.

By denying certiorari herein without memorandum or opinion, this petitioner and the lower Court are each left without any positive or sure indication as to whether this Court has denied certiorari at this time because the decision and opinion of the Circuit Court is still subject to review and adjudication on constitutional grounds in the U. S. Emergency Court of Appeals pursuant to Protest MR 28-31-P, now pending, or whether the Court was influenced by the erroneous statement of counsel for respondent that

> "the regulation here in question has been found to be valid in all respects". (See our Reply Brief for refuta-

tion of the above quotation, pp. 6-18, and footnotes 9 (p. 17), 1 (p. 7), 5 (p. 11), 12 (pp. 22-23) and 10 (p. 17), all in said Reply Brief.)

As indicated by the references above, we disclosed in Petitioner's Reply Brief filed herein in September, that petitioner had duly filed his Protest MR 28-31-P pursuant to the provisions of Section 203 of the Emergency Price Control Act of 1942 when it became apparent from a denial of rehearing by the Circuit Court that the constitutional questions involved in this case should be presented to the Emergency Court of Appeals. This protest is still pending before the Administrator. All efforts of petitioner to obtain a hearing or a prompt decision on this protest have as yet been without avail. Application for a mandatory order requiring the Administrator to act upon the protest within a time to be fixed by the Court was filed by petitioner in the U. S. Emergency Court of Appeals on September 8, 1944, pursuant to the provisions of Section 203(d) of the Emergency Price Control Act of 1942 as amended by the Stabilization Extension Act of 1944, approved June 30, 1944. (Pub. Law 383—78th Congress, Ch. 325—2d Session.) The cause was there docketed and entitled *Stanley W. Taylor, Petitioner v. Chester Bowles, Price Administrator, Respondent*, No. 161 (U.S.E.C.A.), and was denied by the Emergency Court on September 21, 1944, upon a showing by the Administrator that he was proceeding in the consideration and disposition thereof.

Although the Emergency Price Control Act of 1942 as amended by the Stabilization Extension Act of 1944 (supra) provides for a stay in criminal and civil proceedings during the pendency of specified protests and reviews

in the Emergency Court of Appeals, as stated in our Reply Brief, footnote 10 (p. 17), these provisions are not retroactive and provide no relief to this petitioner.

Thus is emphasized the denial of due process to which this petitioner is subjected by the exclusive jurisdictional features of the Act as originally enacted. He may in this case be subjected to punishment before he has been able to obtain adjudication of the validity of the regulation as applied herein, notwithstanding that he has diligently sought and is still seeking such adjudication by the statutory procedure. It is true that the Circuit Court *may* grant a stay of mandate herein pending the disposition of the aforedesignated protest and any appeal therefrom to the Emergency Court, but such stay is not authorized by the Act in cases such as this where judgment was rendered under the Act prior to amendment.

> "The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion."
>
> *Roller v. Holly,* 176 U. S. 398, 409.

> "The law itself must save the parties' rights and not leave them to the discretion of the courts as such."
>
> *Louisville & Nashville R. Co. v. Stockyards Co.,* 212 U. S. 132, 144.

While the authority and jurisdiction of the Emergency Court of Appeals extends to the determination of the validity of orders and regulations issued by the Administrator, that Court has not been granted jurisdiction to set aside a judgment of a District Court or Circuit Court in a criminal case, and under the Act as originally enacted

re was no connection or link between the jurisdiction the District Court over criminal violations and the lusive jurisdiction of the Emergency Court for the ermination of the validity of orders and regulations. us although the Emergency Court of Appeals may ultitely find that the regulation as applied in the instant se is invalid, such a decision may not be recognized by District Court or the Circuit Court herein, and obvisly if petitioner has already served his sentence, it cant preserve his rights whether it be recognized or not.

III.

Certiorari should be granted now or jurisdiction of the se should be preserved by this Honorable Court pending e determination of the questions over which the Emerency Court has exclusive jurisdiction and which are still ending before the Administrator in Protest MR 28-31-P. etitioner has not waived his right to the determination these questions and their determination is not barred any statutory or other limitations.

This Court should preserve jurisdiction if it does not rant certiorari now for as we have pointed out in the etition (pp. 10-22) and in Petitioner's Reply Brief (pp. -5, 18-30), the Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proeedings, and has so far sanctioned such a departure by he trial Court as to call for an exercise of this Honorable Court's power of supervision. As to the matters not inolving the validity of the regulation it is obvious that he Emergency Court of Appeals has no jurisdiction and

those matters should be reviewed by this Court. Nor should the Emergency Court of Appeals be compelled to find the regulation invalid on the basis of the opinion of the Circuit Court, when, as ordinarily construed, the regulation may be capable of providing due process. The manner in which the opinion of the Circuit Court forces invalidity in the regulation when as ordinarily construed it might be valid, is set forth in the Supplemental Transcript herein. (Supp. Tr. 26-34.)

CONCLUSION.

This Court should grant certiorari in this case at this time or should enter a suitable order or opinion whereby it preserves jurisdiction hereof and preserves the liberty of petitioner pending adjudication of the constitutional issues here involved in the Emergency Court of Appeals pursuant to Protest MR 28-31-P.

Notwithstanding the ordinary practice in this Court, petitioner suggests, that because of the extent of the record and collateral pertinent proceedings, and the complications of the law and regulations involved, it may be helpful to the Court to have oral argument hereon, and in all events petitioner prays that such oral argument be granted before any order is entered denying this petition.

All of which is respectfully submitted.

Dated, San Francisco, California,
October 31, 1944.

C. M. WALTER,
JOHN C. STIRRAT,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for petitioner in the above entitled cause and that in my judgment the foregoing petition for rehearing is well founded in point of law as well as in fact and that said petition for rehearing is not interposed for delay.

Dated, San Francisco, California,
October 31, 1944.

C. M. WALTER,
Of Counsel for Petitioner.